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Copyright Royalty Board

37 CFR Part 385

[Docket No. 21-CRB-0001-PR (2023-2027)]

Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges publish for comment and objection proposed regulations that set rates and terms applicable during the period from January 1, 2023 through December 31, 2027, for the section 115 statutory license for making and distributing phonorecords of nondramatic musical works.

DATES: Comments and objections, if any, are due no later than [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by docket number 21-CRB-0001-PR (2023-2027), online through eCRB at https://app.crb.gov.

Instructions: To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at https://app.crb.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at https://app.crb.gov and perform a case search for docket 21-CRB-0001-PR (2023-2027).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, at 202-707-7658 or crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act, title 17 of the United States Code, requires a copyright owner of a nondramatic musical work to grant a license (also known as the "mechanical" compulsory license) to any person who wants to make and distribute phonorecords of that work, under circumstances set forth in the statute and regulations. In addition to the production or distribution of physical phonorecords (compact discs, vinyl, cassette tapes, and the like), section 115 applies to digital transmissions of phonorecords, including permanent digital downloads and ringtones.

Chapter 8 of the Copyright Act authorizes the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115 license. 17 U.S.C. 801(b)(1), 804(b)(4). Accordingly, the Judges commenced the current proceeding in January 2021, by publishing notice of the commencement and a request that interested parties submit petitions to participate. *See* 86 FR 25 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from Amazon.com Services LLC, Apple Inc., Copyright Owners (joint petitioners Nashville Songwriters Association International (NSAI) and National Music Publishers Association (NMPA)), Google LLC, George Johnson, Joint Record Company Participants (filed by Recording Industry Association of America, Inc. for joint petitioners Sony Music

Entertainment, UMG Recordings, Inc., and Warner Music Group Corp.), Pandora Media, LLC, David Powell, SoundCloud Operations Inc.,[1] Spotify USA Inc., and Brian Zisk.

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021.[2] The Judges extended the deadline to October 13, 2021. *Order Granting Joint Motion to Modify the Case Scheduling Order* (eCRB No. 25555) (Aug. 3, 2021). The Judges received Written Direct Statements from participants Amazon.com Services LLC, Apple Inc., Copyright Owners (Nashville Songwriters Association International (NSAI) and National Music Publishers Association (NMPA)), Google LLC, George Johnson, Pandora Media, LLC, and Spotify USA Inc.

On August 31, 2022, the Judges received a motion stating that several participants, (Settling Parties),[3] had reached a partial settlement regarding the rates and terms under Section 115 of the Copyright Act, namely, for Licensed Activity (as defined in 37 CFR part 385, subpart A[4]) presently addressed in subparts C & D of 37 CFR part 385 together with certain regulations of general application (e.g., definitions and late fee provisions) applicable to the subpart C & D Configurations presently addressed in 37 CFR part 385, subpart A, for the 2023-2027 rate period[5] and seeking approval of that partial settlement. *See Motion to Adopt Settlement of Statutory Royalty Rates and Terms*

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[1] SoundCloud Operations Inc. withdrew from the proceeding on May 21, 2021.

[2] Several parties negotiated a proposed partial settlement in May 2021. The Judges accordingly published for comment the parties' proposed changes (to subparts A and B of 37 CFR part 385). *See* 87 FR 33093 (June 1, 2022).

[3] The participants who filed the motion are the National Music Publishers' Association ("NMPA") and Nashville Songwriters Association International ("NSAI," and collectively with NMPA, the "Copyright Owners"), on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC, and Spotify USA Inc. Motion at 1.

[4] "*Licensed Activity* . . . as the term is used in subparts C and D of his part, means delivery of musical works, under voluntary or statutory license, via Digital Phonorecord Deliveries in connection with Interactive Eligible Streams, Eligible Limited Downloads, Limited Offerings, mixed Bundles, and Locker Services." 37 CFR 385.2.

5 The motion refers to the rate period as "the full time period addressed by the Proceeding". Motion at 1.

for Subpart C and D Configurations, Docket No. 21-CRB-0001-PR (2023-2027) at 1 (Motion). The movants state that "the settlement [] represents the consensus of both licensees and licensors representing the vast majority of the market for rights under Section 115 for Subpart C & D Configurations."[6] Motion at 3.

On September 26, 2022, the Judges issued "Order 63 to File Certification or Provide Settlement Agreements" (Order 63), which ordered the Settling Parties to certify that the Motion and the Proposed Regulations annexed to the Motion represent the full agreement of the Settling Parties, *i.e.*, that there are no other related agreements and no other clauses. Order 63 further ordered that if such other agreements or clauses exist, the Settling Parties shall file them.

On September 26, 2022, the Settling Parties filed a "Joint Response to George Johnson's Motion to Compel Production of Settlement and CRB Order 63" (Joint Response). Portions of the Joint Response, which were submitted as Restricted, are responsive to Order 63. On October 6, 2022, the Settling Parties filed a "Joint Submission of Settling Participants Regarding Settlement Agreement" (Joint Submission) which removed the Restricted designation to the "Settlement Agreement" attached as Exhibit A to the Joint Submission. However, the Joint Response and the Joint Submission do not completely and adequately respond to Order 63.

On October 3, 2022, Google and NMPA filed "Google and NMPA's Joint Notice of Lodging" (Joint Notice of Lodging), which indicated that those two parties found Order 63 unclear regarding what is meant by "related agreements." Google and NMPA offered that they broadly construed Order 63's reference to "related agreements" to include certain letter agreements executed between Google, on the one hand, and certain

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6 The movants indicate that participant George Johnson does not agree to the settlement and that participants David Powell and Brian Zisk should be dismissed because they did not file a Written Direct Statement. Motion at 3 and n. 1. Mr. Johnson filed an opposition to the motion (eCRB. No. 27239) on September 6 which the Judges consider relevant to this proposed rule.

music publishers and the NMPA, on the other hand, on or around the execution date of the settlement agreement. Google and NMPA indicated they will "lodge" such letter agreements concurrently with their Joint Notice of Lodging.[7] Google and NMPA also indicated that they do not believe that the letter agreements are substantively related to the parties' settlement agreement, and that the letter agreements simply concern Google's allocation practices to avoid double payments arising from certain direct agreements.

On October 17, 2022, the Judges issued "Order 64 to File Settlement Agreements and Provide Certification" (Order 64), which clarified the scope of Order 63 and ordered the Settling Parties to:

> (1) *file* (not "lodge") any supplemental written agreements between Service Participants, on the one hand, and Copyright Owners and/or their affiliates, including copyright owners that they represented in this proceeding, on the other hand, that represent consideration for, or are contractually related to, the Settlement referenced in the Motion.
>
> (2) file a detailed description of any supplemental oral agreements between Service Participants, on the one hand, and Copyright Owners and/or their affiliates, including copyright owners that they represented in this proceeding, on the other hand, that represent consideration for, or are contractually related to the Settlement referenced in the Motion, through a certification or certifications from individuals with direct knowledge of any such supplemental oral agreements.
>
> (3) file a certification or certifications from a person or persons with first-hand knowledge stating that there are no other agreements, written or oral, beyond the Settlement, the Settlement Agreement and the filed supplemental written or oral agreements responsive to this order.
>
> (4) explain in a supplemental brief why the remaining restricted portions of the Joint Response, apart from Exhibit A, from which the Restricted designation has been removed, would, if disclosed, interfere with the ability of the Producer to obtain like information in the future.

On October 26, 2022, the Settling Parties filed a "Joint Response to Order 64" (Joint Response 2).

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[7] On October 7, 2022, Google and NMPA submitted "Google and NMPA's Joint Notice of Public Lodging" which included public versions of letter agreements.

In response to item #1 above, Joint Response 2 noted that the October 6, 2022, Joint Submission removed the Restricted designation to the "Settlement Agreement" and attached it within Exhibit A to Joint Response 2. In Joint Response 2, Google and NMPA also filed the aforementioned letter agreements as Exhibit B to Joint Submission 2.[8] Joint Response 2 also included the Settling Parties' representation that other than the Settlement Agreement itself, there are no other agreements responsive to Order 64.

In response to item #2 above, Joint Response 2 stated that there are no supplemental oral agreements responsive to Order 64.

In response to item #3 above, Joint Response 2 included Exhibits C-1 through C-7, certifications from a representative of each Party with first-hand knowledge of the Settlement Agreement and negotiations, which collectively attest that there are no other agreements, written or oral, responsive to Order 64 beyond the agreements provided as part of Joint Response 2.

In response to item #4 above, Joint Response 2 noted that the Settling Parties do not believe that there is any reason why any restricted portions of the Joint Response need to remain restricted. Therefore, the Settling Parties filed, concurrently with Joint Response 2, a revised version of the Joint Response that removes all redactions, entitled "[Revised to Remove Redactions] Joint Response to George Johnson's Motion to Compel Production of Settlement and CRB Order 63." (Revised Joint Response).

The Settling Parties offered that through Joint Response 2, and the related submissions referenced therein, the Judges have all materials necessary to publish the proposed rates and terms for public comment. The Settling Parties noted the necessary public comment and objection period, as well as potential consequences to the industry if rates and terms are not effective in time to be operationalized for the beginning of 2023,

[8] Joint Response 2 reiterated Google and NMPA's view that the letter agreements are not substantively related to the parties' settlement agreement, and that the letter agreements simply concern Google's allocation practices to avoid double payments arising from certain direct agreements

and therefore request that the Judges publish the proposed rates and terms for public comment as soon as possible.[9] Proposed regulations implementing the settlement are attached to Joint Response 2.

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval." This section states that the Judges shall (1) provide an opportunity to comment on the agreement to non-participants who would be bound by the terms, rates, or other determination set by the agreement; and (2) provide an opportunity to comment and to object to participants in the proceeding who would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

Having reviewed Joint Response 2, its attachments, and the related submissions referenced therein, the Judges find that Joint Response 2, Exhibit A, sub-exhibit A (referenced therein as the "Settlement Agreement" and "Proposed Regulations") includes "the agreement" for purposes of Section 801(b)(7)(A). The portions of Joint Response 2 Exhibit A, sub-exhibit A referred to as "Settlement Agreement" and "Proposed Regulations" may be found on pages 9-17 of 89 and 19-34 of 89 of Joint Response 2, *(eCRB No. 27290).* The regulatory amendments that adoption of the proposed settlement would entail are reflected in the **Proposed Regulations** portion of this Notice.[10]

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[9] The Judges are aware of the participants' and the public's interest in timely implementation of rates and terms, and note that the submission of partial agreements and related materials as restricted has been a source of unfortunate delay in consideration of the proposed settlement of statutory royalty rates and terms for subpart C and D configurations.

[10] The docket for this proceeding, including documents referenced in this notice, may be accessed via the Electronic filing system eCRB at https://app.crb.gov and perform a case search for docket 21-CRB-0001-PR (2023-2027).

If the Judges adopt rates and terms reached pursuant to a negotiated settlement, those rates and terms are binding on all copyright owners of musical works and those using the musical works in the activities described in the proposed regulations.

The Judges solicit comments and objections from participants on whether they should adopt the proposed regulations as statutory rates and terms relating to the making and distribution of phonorecords of nondramatic musical works.

Comments and objections regarding the rates and terms must be submitted no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 385 as follows:

PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

2. Revise subpart C to read as follows:

Subpart C—Eligible Interactive Streaming, Eligible Limited Downloads, Standalone Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Locker Services, and Other Delivery Configurations

Sec.

§385.20 Scope.

This subpart establishes rates and terms of royalty payments for Eligible Interactive Streams and Eligible Limited Downloads of musical works, and other reproductions or distributions of musical works through Standalone Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Paid Locker Services, and Purchased Content Locker Services provided through subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115, exclusive of Offerings subject to subpart D of this part.

§385.21 Royalty rates and calculations.

(a) *Applicable royalty*. Licensees that engage in Licensed Activity covered by this subpart pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section.

(b) *Rate calculation*. Royalty payments for Licensed Activity in this subpart shall be calculated as provided in this paragraph (b). If a Service Provider makes available different Offerings, royalties must be calculated separately with respect to each Offering taking into consideration Service Provider Revenue, TCC, subscribers, Plays, expenses, and Performance Royalties associated with each Offering. A Service Provider shall not be required to subject the same portion of Service Provider Revenue, TCC, subscribers, Plays, expenses, or Performance Royalties to the calculation of royalties for more than one Offering in an Accounting Period.

(1) *Step 1: Calculate the all-in royalty for the Offering*. For each Accounting Period, the all-in royalty for each Offering in this subpart with the exception of Mixed Service Bundles shall be the greater of {a} the applicable percent of Service Provider Revenue, as set forth in Table 1 to this paragraph (b)(1), and {b} the result of the TCC Prong Calculation for the respective type of Offering as set forth in Table 2 to this

paragraph (b)(1). For Mixed Service Bundles, the all-in royalty shall be the result of the TCC Prong Calculation as set forth in Table 2.

Table 1 to Paragraph (b)(1)

Royalty Year:	**2023**	**2024**	**2025**	**2026**	**2027**
Percent of Service Provider Revenue	15.1	15.2	15.25	15.3	15.35

Table 2 to Paragraph (b)(1)

Type of Offering	**TCC Prong Calculation**
Standalone Non-Portable Subscription Offering—Streaming Only	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
Standalone Non-Portable Subscription Offering—Mixed	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
Standalone Portable Subscription Offering	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of $1.10 per subscriber for the Accounting Period.
Free nonsubscription/ad-supported services free of any charge to the End User	26.2% of TCC for the Accounting Period
Bundled Subscription Offering	24.5% of TCC for the Accounting Period
Mixed Service Bundle	26.2% of TCC for the Accounting Period
Purchased Content Locker Service	26.2% of TCC for the Accounting Period
Standalone Limited Offering	26.2% of TCC for the Accounting Period
Paid Locker Service	26.2% of TCC for the Accounting Period

(2) *Step 2: Subtract applicable Performance Royalties*. From the amount determined in step 1 in paragraph (b)(1) of this section, for each Offering of the Service Provider, subtract the total amount of Performance Royalties that the Service Provider has expensed or will expense pursuant to public performance licenses in connection with uses of musical works through that Offering during the Accounting Period that constitute Licensed Activity. Although this amount may be the total of the Service Provider's payments for that Offering for the Accounting Period, it will be less than the total of the performance royalties if the Service Provider is also engaging in public performance of musical works that does not constitute Licensed Activity. In the case in which the Service Provider is also engaging in the public performance of musical works that does not constitute Licensed Activity, the amount to be subtracted for Performance Royalties shall

be the amount allocable to Licensed Activity uses through the relevant Offering as determined in relation to all uses of musical works for which the Service Provider pays performance royalties for the Accounting Period. The Service Provider shall make this allocation on the basis of Plays of musical works, provided that if the Service Provider is not capable of tracking Play information, including because of bona fide limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings, and further provided that, if the Service Provider is also not capable of utilizing a manner consistent with a methodology used for making royalty payment allocations for the use of individual sound recordings, the Service Provider may use an alternative, good faith methodology that is reasonable, identifiable, and implemented consistently.

(3) *Step 3: Determine the payable royalty pool*. The payable royalty pool is the amount payable for the reproduction and distribution of all musical works used by the Service Provider by virtue of its Licensed Activity for a particular Offering during the Accounting Period. This amount is the greater of:

(i) The result determined in step 2 in paragraph (b)(2) of this section; and

(ii) The royalty floor (if any) resulting from the calculations described in paragraph (d) of this section.

(4) *Step 4: Calculate the per-work royalty allocation*. This is the amount payable for the reproduction and distribution of each musical work used by the Service Provider by virtue of its Licensed Activity through a particular Offering during the Accounting Period. To determine this amount, the result determined in step 3 in paragraph (b)(3) of this section must be allocated to each musical work used through the Offering. The allocation shall be accomplished by the Mechanical Licensing Collective by dividing the

payable royalty pool determined in step 3 for the Offering by the total number of Plays of all musical works through the Offering during the Accounting Period (other than Plays subject to subpart D of this part) to yield a per-Play allocation, and multiplying that result by the number of Plays of each musical work (other than Plays subject to subpart D of this part) through the Offering during the Accounting Period. For purposes of determining the per-work royalty allocation in all calculations under step 4 in this paragraph (b)(4) only (i.e., after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each Play shall be counted as provided in paragraph (c) of this section. Notwithstanding the foregoing, if the Service Provider is not capable of tracking Play information because of bona fide limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings.

(c) *Overtime adjustment*. For purposes of the calculations in step 4 in paragraph (b)(4) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of Plays as follows.

(1) 5:01 to 6:00 minutes—Each Play = 1.2 Plays.

(2) 6:01 to 7:00 minutes—Each Play = 1.4 Plays.

(3) 7:01 to 8:00 minutes—Each Play = 1.6 Plays.

(4) 8:01 to 9:00 minutes—Each Play = 1.8 Plays.

(5) 9:01 to 10:00 minutes—Each Play = 2.0 Plays.

(6) For playing times of greater than 10 minutes, continue to add 0.2 Plays for each additional minute or fraction thereof.

(d) *Royalty floors for specific types of Offerings*. The following royalty floors for use in step 3 in paragraph (b)(3) of this section shall apply to the respective types of Offerings:

(1) *Standalone non-portable Subscription Offerings—streaming only*. Except as provided in paragraphs (d)(4) and (6) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings only in the form of Eligible Interactive Streams and only from a non-portable device to which those Eligible Interactive Streams are originally transmitted while the device has a live network connection, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 18 cents per subscriber per Accounting Period.

(2) *Standalone non-portable Subscription Offerings—mixed*. Except as provided in paragraphs (d)(4) and (6) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings either in the form of Eligible Interactive Streams or Eligible Limited Downloads but only from a non-portable device to which those Eligible Interactive Streams or Eligible Limited Downloads are originally transmitted, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 36 cents per subscriber per Accounting Period.

(3) *Standalone portable Subscription Offerings*. Except as provided in paragraphs (d)(4) and (6) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings in the form of Eligible Interactive Streams or Eligible Limited Downloads from a portable device, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 60 cents per subscriber per Accounting Period.

(4) *Bundled Subscription Offerings*. In the case of a Bundled Subscription Offering, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 33 cents per Accounting Period for each Active Subscriber. Notwithstanding the foregoing, solely where the Licensed Activity provided as part of a Bundled Subscription Offering would qualify as a Standalone Limited Offering if offered on a standalone basis, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 25 cents per Accounting Period for each Active Subscriber.

(5) *Mixed Service Bundles*. In the case of a Mixed Service Bundle, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 25 cents per Accounting Period for each Active Subscriber.

(6) *Other Offerings*. A Standalone Limited Offering, a Paid Locker Service, a Purchased Content Locker Service, and a free nonsubscription/ad-supported service free of any charge to the End User shall not be subject to a royalty floor in step 3 in paragraph (b)(3) of this section.

(e) *Computation of per-subscriber rates and royalty floors*. For purposes of this section, to determine the per-subscriber rates in step 1 in paragraph (b)(1) of this section and the royalty floors in step 3 in paragraph (b)(3) of this section, as applicable to any particular Offering, the total number of subscribers for the Accounting Period shall be calculated by taking all End Users who were subscribers for a complete Accounting Period, prorating in the case of End Users who were subscribers for only part of an Accounting Period (such proration may take into account the subscriber's billing period), and deducting on a prorated basis for End Users covered by an Offering subject to subpart D of this part, except in the case of a Bundled Subscription Offering, subscribers shall be determined with respect to Active Subscribers. The product of the total number of subscribers for the Accounting Period and the specified number of cents per subscriber (or Active Subscriber, as the case may be) shall be used as the subscriber-based

components of the royalty calculation for the Accounting Period. A Family Plan subscription shall be treated as 1.75 subscribers per Accounting Period, prorated in the case of a Family Plan subscription in effect for only part of an Accounting Period. A Student Plan subscription shall be treated as 0.5 subscribers per Accounting Period, prorated in the case of a Student Plan subscription in effect for only part of an Accounting Period. A Bundled Subscription Offering containing a Family Plan with one or more Active Subscriber(s) shall be treated as having 1.75 Active Subscribers. A Bundled Subscription Offering containing a Student Plan with an Active Subscriber shall be treated as having 0.5 Active Subscribers. For the purposes of calculating per-subscriber rates and royalty floors under this section, Artificial Accounts shall not be counted as subscribers, Active Subscribers, or End Users.

3. Revise subpart D to read as follows:

Subpart D – Promotional Offerings, Free Trial Offerings and Certain Purchased Content Locker Services

Sec.

§385.30 Scope.

This subpart establishes rates and terms of royalty payments for Promotional Offerings, Free Trial Offerings, and certain Purchased Content Locker Services provided by subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115.

§385.31 Royalty rates.

(a) *Promotional Offerings*. For Promotional Offerings of audio-only Eligible Interactive Streams and Eligible Limited Downloads of sound recordings embodying

musical works that the Sound Recording Company authorizes royalty-free to the Service Provider, the royalty rate is zero.

(b) *Free Trial Offerings*. For Free Trial Offerings, the royalty rate is zero.

(c) *Certain Purchased Content Locker Services*. For every Purchased Content Locker Service for which the Service Provider receives no monetary consideration, the royalty rate is zero.

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David P. Shaw,
Chief Copyright Royalty Judge.
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